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ISSUE: Challenge to the Nevada Revised Statutes
Best Interests of the Children Statute

CONFIDENTIAL INFORMATION NOT FOR DISSEMMINATION TO THE GENERAL PUBLIC

QUESTION TO THE STATE OF NEVADA LEGISLATURE:

WHETHER OR NOT PRESUMED "FIT" PARENTS SHOULD BE WELL-DEFINED IN A SEPARATE CATEGORY 'SHARED CUSTODY' AND OMITTED UNDER THE BEST INTERESTS OF THE CHILDREN STATUTE NRS 125.480 AND EXEMPT FROM THE FOLLOWING:

1. preparing for or participating in an evidentiary hearing to determine "fitness" when the parties had previously stipulated to who should be awarded primary physical custody;

2. standing under the same umbrella with other parents who are presumed to have physically or emotionally or sexually abused or abandoned their minor children;
3. participating in a psychological evaluation.

NOTE: THE COURT COULD IMPOSE SANCTIONS IF THE FOLLOWING IS LEAKED TO THE GENERAL PUBLIC AND/OR THE LEGISLATURE.

Ms. Woodhouse, my particular case is "under seal" and gag order and all confidential information is prohibited from wide dissemination and viewing from the public or from disclosure of any confidential information. Following is a *synopsis* from a motion submitted to Family Court and concerns the pertinent part of my constitutional challenge. If it is at all possible, I would prefer that the synopsis not be included as part of the Question.

VICTORIA argues that in 2005, the Family Law Section of the State Bar of Nevada filed amicus curiae briefs for the Court's participation in the determination of joint physical custody in the case of Potter v. Potter, 121 Nev. 613, 119 P.3d 1246. The Family Law Section requested that the Court address the following with regard to joint physical custody:

1.) the definition of joint physical custody;
2.) whether joint physical custody for the purposes of NRS 125C.200 has to be equal;
3.) whether a specific time share constitutes joint physical custody, and

4.) whether joint physical custody is defined by the courts or by the parties.

VICTORIA argues that because the Nevada Legislature failed to address and define joint physical custody by the time Judge Sanchez awarded joint physical custody to both parties in this case, it infringed on VICTORIA'S *substantive* constitutional rights and totally deprived her of a fundamental right to a parent-child relationship of her two children. VICTORIA also contends that when interpreting a statute, any doubt as to legislative intent must be resolved in favor of what is reasonable, and against what is unreasonable, so as to avoid absurd results. Cragun v. Nevada Pub. Employees' Ret. Bd., 92 Nev. 202, 205, 547 P.2d 1356, 1358 (1976).

VICTORIA also challenges the constitutionality of the best interest of the children statute and argues that Nevada Revised Statute is void for vagueness because it fails to define "joint custody." VICTORIA contends that the Nevada Courts have defined when a "statute is void for vagueness if "...a person of ordinary intelligence cannot understand what conduct is prohibited and is predicated upon its repugnancy to the due process clause of the Fourteenth Amendment..." in that it encourages arbitrary and discriminatory enforcement. VICTORIA challenges the constitutionality of the best interest of the children statute and argues that an award of "joint custody" is unconstitutional when the legislature and the courts had not yet defined what "joint custody" is in that persons of ordinary intelligence have a vague understanding of NRS 125.480 which states in pertinent part:

1. In determining custody of a minor child in an action brought under this chapter, the sole consideration of the court is the best interest of the child. If it appears to the court that **joint custody** would be in the best interest of the child, the court may grant custody to the parties jointly.
2. Preference must not be given to either parent for the sole reason that the parent is the mother or the father of the child.
3. The court shall award custody in the following order of preference unless in a particular case the best interest of the child requires otherwise:
(a) To both parents jointly pursuant to NRS 125.490 or to either parent. If the court does not enter an order awarding **joint custody** of a child after either parent has applied for **joint custody**, the court shall state in its decision the reason for its denial of the parent's application.
(b) To a person or persons in whose home the child has been living and where the child has had a wholesome and stable environment.
(c) To any person related within the third degree of consanguinity to the child whom the court finds suitable and able to provide proper care and guidance for the child, regardless of whether the relative resides within this State.
(d) To any other person or persons whom the court finds suitable and able to provide proper care and guidance for the child.

VICTORIA further challenges the constitutionality of the best interest of the children statute and argues that NRS 125.480 is also void for vagueness because it goes against the policy of preserving the sanctity of "...a parent's interests in the nurture, upbringing, companionship, care, and custody of children which are generally protected by the

Due Process Clause of the Fourteenth Amendment." The Supreme Court of the United States acknowledges in Meyer v. Nebraska, 262 U.S. 390, 399, 401, 43 S.Ct. 625, 67 L.Ed. 1042 (1923), "the right of parents to "bring up children," 262 U.S., at 399, 43 S.Ct. 625, and to control the education of their own" is protected by the Constitution, id., at 401, 43 S.Ct. 625. VICTORIA further challenges the constitutionality of the best interest of the children statute and argues that this Court failed to consider some of the other relevant factors other jurisdictions have found to be relevant in determining whether to grant joint physical custody to the parties, Taylor, 306 Md. 290, 508 A.2d 964: 1.) the willingness of parents to share custody; 2.) the potential disruption of the child's social and school life; 3.) the geographic proximity of the parental homes; 4.) the demands of parental employment; and 5.) the sincerity of the parents' request.

VICTORIA contends that the Supreme Court of Washington invalidated its statute because it authorized a contested visitation order at the intrusive behest of any person at any time subject only to a best-interests-of-the child standard. In construing their statute, the state court explained that the "any person" at "any time" language was to be read literally, 137 Wash.2d at 10-11, 969 P.2d, at 25-27, and that "[m]ost notably the statute does not require the petitioner to establish that he or she has a substantial relationship with the child," id., at 20-21, 969 P.2d, at 31. Although the statute speaks of granting visitation rights whenever "visitation may serve the best interest of the child," Wash. Rev.Code § 26.10.160(3), the state court authoritatively read this provision as placing hardly any limit on a court's discretion to award visitation rights. As the court

understood it, the specific best-interests provision in the statute would allow a court to award visitation whenever it thought it could make a better decision than a child's parent had done.

VICTORIA challenges the constitutionality of the best interest of the children statute and argues that the Supreme Court of Nevada should invalidate this statute because it is also void for vagueness. VICTORIA contends that the following phrase is a non sequitur [the 2nd sentence does not logically follow the 1st]. *"In determining custody of a minor child in an action brought under this chapter, the sole consideration of the court is the best interest of the child. If it appears to the court that joint custody would be in the best interest of the child, the court may grant custody to the parties jointly*. VICTORIA argues that if the Nevada Legislature had not yet defined what joint custody is, then the (2) sentences are incompatible with each other's principals and thus void for vagueness. It authorizes a contested custody order at the intrusive behest of the other party without defining "joint custody" subject only to a best-interests-of-the child standard. VICTORIA argues that in construing the statute, that the statute does not *mandate that an investigation be conducted* to establish that the parties meet all the factors in NRS 125.4804(a) through 4(j). Although the statute speaks of granting a modification of custody rights whenever custody may serve the best interest of the child, the Nevada State Court authoritatively reads this provision as placing hardly any limit on a court's discretion to an award of modification of joint custody rights. As the court understood it, the specific best-interests provision in the statute would allow a court to award a modification of joint custody whenever it thought it

could make a better decision than the children's parent had done by 1.) depriving the parents an opportunity to conduct an investigation, 2.) depriving the parents an opportunity to define what joint custody is, and 3.) depriving the parents an opportunity to agree to a parenting plan pursuant to Nevada Revised Statutes.

In addition, VICTORIA challenges and brings to the court's attention NRS 125.520 [Plan for carrying out court's order; access to child's records] which this Court again failed to implement and reads in pertinent part:

> 1. The court may, when appropriate, require the parents to submit to the court a plan for carrying out the court's order concerning custody.
> 2. Access to records and other information pertaining to a minor child, for example, medical, dental and school records, must not be denied to a parent for the reason that the parent is not the child's custodial parent.

VICTORIA further challenges and brings to the court's attention that reasonable "fit" parents would conclude that because the legislature failed to define "joint custody," this Court in actuality cannot implement nor Order any of its sub-parts without first defining what 'joint custody is." NRS 125.510 states in pertinent part: Court orders; modification or termination of orders; form for orders; court may order parent to post bond if parent resides in or has significant commitments in foreign country.

> 1. In determining the custody of a minor child in an action brought pursuant to this chapter, the court may, except as otherwise provided in this section and chapter 130 of NRS:

> (a) During the pendency of the action, at the final hearing or at any time thereafter during the minority of any of the children of the marriage, make such an order for the custody, care, education, maintenance and support of the minor children as appears in their best interest; and
> (b) At any time modify or vacate its order, even if the divorce was obtained by default without an appearance in the action by one of the parties.
> □ The party seeking such an order shall submit to the jurisdiction of the court for the purposes of this subsection. The court may make such an order upon the application of one of the parties or the legal guardian of the minor.

VICTORIA challenges the constitutionality of the best interest of the children statute and argues that reasonable "fit" parents would have a difficult time understanding that their rights as joint custodians could be modified or terminated by the Court at any time – even though the legislature failed to give a well-defined definition for the term "joint custody."

> 2. Any order for joint custody may be modified or terminated by the court upon the petition of one or both parents or on the court's own motion if it is shown that the best interest of the child requires the modification or termination. The court shall state in its decision the reasons for the order of modification or termination if either parent opposes it.

VICTORIA challenges the constitutionality of the best interest of the children statute and argues that similarly, reasonable "fit" parents would have a difficult time understanding that their rights as joint custodians is broad enough to include anyone [and that includes sexual

predators and abusers] for any reason without clarifying whether that person is "fit" or "unfit" to be included in the vague definition of "joint custody."

> 3. Any order for custody of a minor child or children of a marriage entered by a court of another state may, subject to the jurisdictional requirements in chapter 125A of NRS, be modified at any time to an order of joint custody.
> 4. A party may proceed pursuant to this section without counsel.

VICTORIA further challenges the constitutionality of the best interest of the children statute and argues that the sole reason for keeping "fit" parents in the un-defined definition of "joint custody" is a presumption that they are employed, have an education, and have the finances to litigate for a change of custody for the attorneys' own fortune, enrichment and greed to the detriment of the family and the children. VICTORIA further reasons that a substitute for fault-based divorce is now fault-based child custody, pitting "fit" parents against each other and silently shifting the burden from a preponderance of evidence and applying an unevenhanded unspoken heavier burden of clear and convincing evidence. VICTORIA further reasons that the Nevada Legislature has authority to find that "fit" parents should be well-defined in the statute and should also be *exempt from*:

> 4. preparing for or participating in an evidentiary hearing to determine "fitness" when the parties had previously stipulated to who should be awarded primary physical custody;

5. standing under the same umbrella with other parents who are presumed to have physically or emotionally or sexually abused or abandoned their minor children;
6. participating in a psychological evaluation.

VICTORIA challenges the constitutionality of the best interest of the children statute and argues that reasonable "fit" parents would have a difficult time understanding that their rights as joint custodians could be deliberately ignored and modified or terminated by the Court at any time – even though the legislature failed to give a well-defined definition for the term "joint custody" and yet memorialize its un-defined definition in Findings of Facts and Conclusions of Law:

> 5. *Any order awarding a party a limited right of custody to a child must define that right with sufficient particularity to ensure that the rights of the parties can be properly enforced and that the best interest of the child is achieved. The order must include all specific times and other terms of the limited right of custody. As used in this subsection, "sufficient particularity" means a statement of the rights in absolute terms and not by the use of the term "reasonable" or other similar term which is susceptible to different interpretations by the parties.*

VICTORIA challenges the constitutionality of the best interest of the children statute and argues that reasonable "fit" parents would have a difficult time understanding that their rights as joint custodians could be *limited* by the Court at any time – even though the legislature failed to give a well-defined definition for the term "joint custody" - and

memorialize its Findings of Facts and Conclusions of Law even though "fit" parents had *previously stipulated* 3 times and memorialized their agreement in a Parenting Plan that they retain rights as joint custodians:

> 6. All orders authorized by this section must be made in accordance with the provisions of chapter 125A of NRS and must contain the following language:
>
> PENALTY FOR VIOLATION OF ORDER: THE ABDUCTION, CONCEALMENT OR DETENTION OF A CHILD IN VIOLATION OF THIS ORDER IS PUNISHABLE AS A CATEGORY D FELONY AS PROVIDED IN NRS 193.130. NRS 200.359 provides that every person having a *limited right of custody* to a child or any parent having no right of custody to the child who willfully detains, conceals or removes the child from a parent, guardian or other person having lawful custody or a right of visitation of the child in violation of an order of this court, or removes the child from the jurisdiction of the court without the consent of either the court or all persons who have the right to custody or visitation is subject to being punished for a category D felony as provided in NRS 193.130.

VICTORIA challenges the constitutionality of the best interest of the children statute and argues that reasonable "fit" parents would have a difficult time understanding that a culture of indifference permeates Family Court against minor children age 15 and older and that this culture of indifference is perpetuated by this Family Court. That this Court could cut off a minor child's rights to be guided and nurtured by either parent and the child's rights could *cease* at any time before a minor child age 15 or older reaches the age of majority. VICTORIA contends that NRS 125.510

must be strictly construed, and when a statute is clear on its face, the Courts will not look beyond the statute's plain language which states in pertinent part:

> 9. Except where a contract providing otherwise has been executed pursuant to NRS 123.080, the obligation for care, education, maintenance and support of any minor child created by any order entered pursuant to this section ceases:
> (a) Upon the death of the person to whom the order was directed; or
> *(b) When the child reaches 18 years of age if he is no longer enrolled in high school, otherwise, when he reaches 19 years of age.*

VICTORIA contends that the usual test to determine whether her procedural due process rights have been violated is set forth in Mathews v. Eldridge, 424 U.S. 319, 335, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976), and the factors the United States Supreme Court considers are:

1. the private interest that will be affected by the official action;
2. the risk of an erroneous deprivation of the private interest through the procedures used; and the probable value, if any, of additional or substitute procedural safeguards; and
3. finally, the government's interest, including...the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

VICTORIA challenges the constitutionality of the best interest of the children statute and argues that the parties did not agree to an award of joint custody and this court

failed to conduct a hearing for the purposes of determining the custody of the minor children; so consequently the parties failed to meet the 1st step in NRS 125.490:

> 1. There is a presumption, affecting the burden of proof that joint custody would be in the best interest of a minor child if the parents have agreed to an award of joint custody or so agree in open court at a hearing for the purpose of determining the custody of the minor child or children of the marriage.

VICTORIA challenges the constitutionality of the best interest of the children statute and argues that the parties did not agree to joint legal custody and this court failed to conduct a hearing for the purposes of determining the custody of the minor children; so the parties failed to meet the 2nd step in NRS 125.490:

> 2. The court may award joint legal custody without awarding joint physical custody in a case where the parents have agreed to joint legal custody.

VICTORIA challenges the constitutionality of the best interest of the children statute and argues that since the parties failed to meet the 1st and 2nd steps pursuant to NRS 125.490 that the parties' only recourse was the Court's enforcement of the last and final step and that is that an investigation be conducted for the purposes of assisting the parties in making a determination whether an award of joint custody is appropriate. VICTORIA contends that the statute is void for vagueness because it encourages the Court's arbitrary and discriminatory enforcement and it lacks specific language on what conduct is prohibited by the

parties. This Court failed to conduct an investigation 1.) into the party leaving the children alone without parental supervision; 2.) into the party parenting from his cell phone as evidenced by Sprint records; 3.) into Las Vegas Metropolitan Police Department well-checks; and 4.) into the party's lease agreement for an apartment leaving the minor children alone and unsupervised before making a determination as to whether to award joint custody and whether it is appropriate as provided for pursuant to NRS 125.490(3):

> 3. For assistance in making a determination whether an award of joint custody is appropriate, the court ***may*** direct that an investigation be conducted.

VICTORIA also argues that Judge Sanchez commits error by *applying* NRS 125.490 in a joint physical custody arrangement when the Nevada Legislature had not yet fully addressed the issue of defining joint physical custody. VICTORIA challenges the constitutionality of the best interest of the children statute and argues that the statute is void for vagueness when it fails to address the definition of joint custody, fails to make a distinction between sharing parental responsibility in major decision-making matters and sharing responsibility for providing a home for the children. VICTORIA argues that because Judge Sanchez failed to allow the parents to make their own parenting plan as a joint physical custody arrangement in light of the statutory definition of "joint custody," this Court deprived VICTORIA any significant period of time during which the children could possibly reside with or is under the care and supervision of each of the parents. VICTORIA challenges

the constitutionality of the best interest of the children statute and argues that the statute regarding "joint custody" is also too narrowly tailored so as to serve a compelling interest. In addition, Judge Sanchez fails to conduct a reasonableness test "which implicitly calibrates the level of scrutiny *in each custody proceeding case* to match the particular degree of intrusion on the parents' interests." David D. Meyer, Lochner Redeemed: Family Privacy After Troxel and Carhart, 48 UCLA L.Rev. 1125 (2001).

VICTORIA challenges the constitutionality of the best interest of the children statute and argues that Judge Sanchez with deliberate indifference infringed on her *procedural due process rights* by depriving her of proper notice and the opportunity to be heard without issuing independent Findings of Facts and Conclusions of Law based on the factors outlined in NRS 125.490, Joint Custody and voids this Court's Order which states in pertinent part:

1. There is a presumption, affecting the burden of proof, that joint custody would be in the best interest of a minor child if the parents have agreed to an award of joint custody or so agree in open court ***at a hearing for the purpose of determining the custody of the minor child or children of the marriage***;
2. The court may award joint legal custody without awarding joint physical custody in a case where the parents have agreed to joint custody;
3. For assistance in making a determination whether an award of joint custody is appropriate, *the court may direct that an investigation be conducted.*

VICTORIA also contends that due process requires proper "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." Mullane v. Cent. Hanover Bank & Trust Co., 339 IU.S. 306, 314, 70 S.Ct. 652, 94 L.Ed. 865 (1950).